



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

In Reply Refer To:
FWS/DFPA/BFA

Memorandum

To: Service Directorate

From: **Acting** Director /s/ Marshall P. Jones JUL 10 2003

Subject: Interagency Agreement on Interstate Natural Gas Pipeline Construction

In May 2002, the Department of the Interior joined several other Federal agencies in signing an interagency agreement ("Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission") regarding early coordination of environmental reviews associated with authorizations to construct and operate interstate natural gas pipelines certificated by the Federal Energy Regulatory Commission (attachment 1). A copy of the interagency agreement may also be accessed at:

<http://habitat.fws.gov/ferc2.pdf>

The Fish and Wildlife Service is involved in the review of natural gas pipelines through the National Environmental Policy Act, as well as the Fish and Wildlife Coordination Act, Migratory Bird Treaty Act, Endangered Species Act, and Clean Water Act, when appropriate. The Service supports and encourages early project planning participation in natural gas pipeline project reviews to the greatest extent possible. Please review the interagency agreement and provide it to all Service staff involved in the review of natural gas pipeline activities, so that we are prepared to assist FERC, other Federal agencies and applicants in the review of applications for the construction and operation of interstate natural gas pipelines.

FERC has established a new NEPA Pre-Filing Process that is designed to incorporate environmental reviews prior to application for pipeline certificates. We are encouraged by FERC's new NEPA Pre-Filing Process for interstate natural gas pipelines, and believe that the early involvement provided by this process, provides increased opportunities for ensuring protection of fish and wildlife resources. FERC reference paper titled "Processes for Environmental and Historic Preservation Review of Proposed Interstate Natural Gas Facilities," on the Traditional and new NEPA Pre-Filing processes is attached for your information (attachment 2).

Please note that you can expect that prospective applicants may be contacting you to determine your willingness and ability to participate in the NEPA Pre-Filing Process. Finally, we strongly suggest that you consider the potential benefits of actively participating with FERC as a formal "cooperating agency" in the preparation of an Environmental Impact Statement and to seek those arrangements where appropriate.

To ensure that all staff are familiar with the interagency memorandum of agreement and the new NEPA Pre-Filing Process for natural gas pipelines, please consider incorporating these subjects into national and regional training opportunities, including courses that address NEPA review, the Fish and Wildlife Coordination Act, and the Clean Water Act Section 404 regulatory program. We also encourage the Regions to make the interagency agreement available electronically through the Internet or other means.

If you have any questions, please contact Dr. Benjamin N. Tuggle, Chief, Division of Federal Program Activities, at (703) 358-2183.

Attachments

cc: 3238-MIB-FWS/Directorate Reading File
3238-MIB-FWS/CCU File
3245-MIB-FWS/AFHC File
840-ARLSQ-FWS/DFHC File
400-ARLSQ-FWS/DFPA File
400-ARLSQ-FWS/DFPA/BFA File
400-ARLSQ-FWS/DFPA/BFA Staff
Assistant Regional Directors - Ecological Services

FWS/DFPA/BFA/RNims-Elliott: gj:05/15/03:703/358-2183

S:\DHC\BFA\Nims-ell\Energy Initiative\natural gas IAG implementation memo

**INTERAGENCY AGREEMENT
ON EARLY
COORDINATION OF REQUIRED ENVIRONMENTAL AND
HISTORIC PRESERVATION REVIEWS CONDUCTED IN
CONJUNCTION WITH THE ISSUANCE OF
AUTHORIZATIONS TO CONSTRUCT AND OPERATE
INTERSTATE NATURAL GAS PIPELINES CERTIFICATED
BY THE FEDERAL ENERGY REGULATORY COMMISSION**

May 2002

The Department of the Army

The Department of Agriculture

The Department of Commerce

The Department of the Interior

The Department of Transportation

The Department of Energy

The Advisory Council on Historic Preservation

The Federal Energy Regulatory Commission

The Council on Environmental Quality

The Environmental Protection Agency

expedite their reviews of authorizations for energy-related projects and to take other action necessary to accelerate the completion of such projects, while maintaining safety, public health and environmental protections. Consistent with the Executive Order, and in recognition of the fact that the timely authorization of new interstate natural gas pipeline projects is essential to facilitate the nation's ability to meet the goal of sufficient availability and use of natural gas, the Participating Agencies enter into this Agreement.

The FERC is responsible for authorizing the construction and operation of interstate natural gas pipelines. It issues certificates of public convenience and necessity for such pipelines under section 7 of the Natural Gas Act of 1938, as amended (the "NGA"), and authorizes the construction and siting of facilities for the import or export of natural gas under section 3 of the NGA. It also authorizes the construction and operation of natural gas pipelines pursuant to the Natural Gas Policy Act.

The Bureau of Land Management ("BLM"), within the Department of the Interior, is responsible for the management of public lands. The BLM is principally responsible for issuing right-of-way permits authorizing natural gas pipelines to cross federal lands. Section 28 of the Mineral Leasing Act of 1920, as amended, gives BLM the authority to issue right-of-way permits for natural gas pipelines through lands held by the United States, except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

The National Park Service ("NPS"), within the Department of the Interior, may issue right-of-way permits only for those uses or activities specifically authorized by Congress and only if there is no practicable alternative to such use of NPS lands. There are no general authorities for issuance of right-of-way permits for gas or other petroleum product pipelines across units of the National Park System. However, in individual instances, park-specific legislation may provide for such authorizations.

The Minerals Management Service ("MMS"), within the Department of the Interior, is responsible for issuing and enforcing regulations to promote safe operations, environmental protection, and resource conservation on the Outer Continental Shelf ("OCS"). The MMS is responsible for granting rights-of-way through submerged lands of the OCS. In addition, the MMS establishes and enforces pipeline safety requirements for those OCS pipelines within the jurisdiction of Department of the Interior. 30 C.F.R. § 250.1001.

The Bureau of Reclamation ("Reclamation"), within the Department of the Interior, is responsible for managing, developing, and protecting water and related resources in an environmentally and economically sound manner in the interest of the public. Reclamation may grant rights-of-way for natural gas pipelines and other uses where compatible with project purposes as authorized in section 10 of the Act of August 4, 1939, and section 28 of the Mineral Leasing Act of 1920, as amended.

The Bureau of Indian Affairs ("BIA"), within the Department of the Interior, is charged with responsibility to administer federal Indian policy and to discharge the federal trust for American Indian Tribes, Alaska Native villages and tribal organizations.

I. PURPOSE

The purpose of this Agreement is to establish a framework for early cooperation and participation among the signatories to this Agreement (the "Participating Agencies") that will enhance coordination of the processes through which their environmental and historic preservation review responsibilities under the National Environmental Policy Act of 1969, as amended, ("NEPA") and other related statutes are met in connection with the authorizations that are required to construct and operate interstate natural gas pipeline projects certificated by the Federal Energy Regulatory Commission ("FERC").

NEPA requires federal agencies to evaluate the environmental impact of major federal actions significantly affecting the quality of the human environment. The issuance by the FERC of a certificate of public convenience and necessity for a major pipeline construction project using a right-of-way in which there is no existing natural gas pipeline is an action that normally requires the preparation of an environmental impact statement ("EIS"). 18 C.F.R. § 380.6(a)(3). Pipeline projects that do not require an EIS require the preparation of an Environmental Assessment ("EA"). Consistent with NEPA and the Council on Environmental Quality's (the "CEQ") regulations, this Agreement encourages early involvement with the public and relevant government agencies in project development activities.

This Agreement emphasizes the importance for the lead agency to receive specific information from the other Participating Agencies at key stages of project development to foster an efficient procedure to develop documentation to meet all agencies' requirements. Specifically, the intent of this Agreement is to establish a process to facilitate the timely development of needed natural gas pipeline projects, whereby participating agencies will:

- Work together and with applicants and other stakeholders, as appropriate, including before complete applications for the necessary authorizations are filed;
Identify and resolve issues as quickly as possible;
- Attempt to build a consensus among governmental agencies and their stakeholders;
- Expedite the environmental permitting and review for natural gas pipeline projects.

II. BACKGROUND

Through Executive Order 13212 issued on May 18, 2001, (the "Executive Order") the President declared that it is the policy of his Administration that executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy. In the Executive Order, the President directed federal agencies to

BIA is responsible for, among other things, approving rights-of-way across lands held in trust for an Indian or Indian Tribe. In addition, regarding natural gas and all rights-of-way for energy resource transport, BIA must consult and coordinate through Government-to-Government relations with any affected Tribe.

The Forest Service ("FS"), within the Department of Agriculture, is responsible for the management of 192 million acres of National Forest System ("NFS") lands. Many hundreds of miles of natural gas pipelines cross NFS lands. Most of these pipelines are permitted by a BLM-issued right-of-way grant, pursuant the authority granted to the Secretary of the Interior in section 28 of the Mineral Leasing Act.

The Army Corps of Engineers ("COE") is responsible for the administration of laws for the protection and preservation of waters of the United States, including wetlands. Pursuant to the requirements of section 10 of the Rivers and Harbors Act of 1899, and section 404 of the Clean Water Act ("CWA"), the COE may issue authorizations for the discharge of dredged or fill material into navigable waters, including wetlands.

The Research and Special Programs Administration ("RSPA"), within the Department of Transportation, is responsible for establishing safety standards for the nation's pipeline transportation system. RSPA carries out this responsibility through its Office of Pipeline Safety ("OPS"). OPS establishes and enforces minimum safety standards for the design, construction, operation and maintenance of pipeline facilities. 49 U.S.C. § 60101 et seq.

The Environmental Protection Agency ("EPA") is responsible for administering a wide variety of environmental laws. The responsibilities of EPA relevant to the pipeline permitting process include commenting on Environmental Impact Statements under section 309 of the Clean Air Act (the "CAA"), the authority to participate in the Section 404 permit process and to restrict, in certain circumstances, the use of specific areas as disposal sites for dredged or fill material pursuant to section 404, and the authority to issue permits for pipeline-related activities that involve discharges of pollutants subject to the requirements of the National Pollutant Discharge Elimination System or emissions that may be subject to permitting requirements under the CAA (unless the programs are being administered by a state authorized or approved by EPA).

The Fish and Wildlife Service ("FWS"), within the Department of the Interior, is responsible for the conservation, protection and enhancement of fish, wildlife, plants and their habitats. The FWS has principal trust responsibility to protect and conserve migratory birds, threatened and endangered species, certain marine mammals, and interjurisdictional fish. The FWS manages the National Wildlife Refuge System ("NWRS"). Applicants for pipeline construction projects are required to consult with the FWS on projects potentially affecting any of these resources. The FWS also consults on projects potentially affecting fresh water or marine resources and water quality. In addition, the FWS may authorize use by permit for areas within the NWRS.

The National Oceanic and Atmospheric Administration ("NOAA"), within the Department of Commerce and through offices such as the National Marine Fisheries Service and the National Ocean Service, is responsible for a variety of activities in marine and coastal ecosystems as mandated by several statutes and authorities. These activities include managing protected species; managing commercial and recreational fisheries; protecting marine and coastal habitats; working with states to develop and implement comprehensive coastal zone management plans; and protecting and managing designated Marine Sanctuaries. Pipeline project construction in coastal and/or ocean areas may overlap with several NOAA responsibilities depending on the location and type of project.

The Advisory Council on Historic Preservation ("ACHP") reviews and provides comments with regard to actions by federal agencies that may affect properties listed or eligible to be listed on the National Register of Historic Places pursuant to the National Historic Preservation Act.

The Department of Energy ("DOE") is charged with developing and coordinating national energy policy.

The CEQ was established within the Executive Office of the President in 1969 by NEPA. Its purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment. CEQ has issued regulations applicable to federal agencies implementing NEPA. 40 C.F.R. Parts 1500 through 1508.

III. THE PARTICIPATING AGENCIES AGREE TO THE FOLLOWING:

The Participating Agencies hereby agree to work with each other, and with other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. Specifically, each Participating Agency agrees to:

A. Commit to Early Involvement.

1. Conduct an Early Initial Review. As soon as practicable when a prospective applicant, or a Participating Agency, makes a request for involvement in connection with a project under development, each Participating Agency will assess its potential role in the review and issuance of approvals for the project. If a Participating Agency determines it has a role, it will:

- a. Identify agency contacts for the proposed project. If a prospective applicant or Participating Agency needs assistance in determining regional, local or project specific contacts, then the identified contacts will assist in identifying additional contacts. The initial agency contacts for each Participating Agency for the purposes of this Agreement are identified in Section V below.
- b. Meet with prospective applicants and other agencies when requested by the prospective applicant, the lead agency, or at its own initiative, to identify areas

of potential concern to other agencies and to assess the need for and availability of agency resources to address issues related to the proposed project.

2. Consult with the Lead Agency In Establishing a Schedule. The lead agency will notify other relevant Participating Agencies as early as possible of upcoming projects for construction and operation of interstate natural gas pipelines and, in consultation with other involved Participating Agencies, identify those projects that will be subject to this Agreement. The lead agency will then, taking into consideration the relative priorities of other projects subject to this Agreement, establish a commensurate schedule for the project review process, including key times for consultation. Such schedule shall be as expeditious as possible and consistent with the periods for analysis and response that are required by the statutes and regulations applicable to the proposed project. In establishing this schedule, the relevant Participating Agencies will strive to ensure that individual permitting processes and related permit review activities occur on a concurrent, rather than sequential, basis with the objective of avoiding unnecessary delays in the process and the schedule established by the lead agency. If at any point during the consultation process a relevant Participating Agency anticipates an inability to comply with the agreed-upon schedule, it will communicate the reason for this inability as soon as possible to the lead agency. The lead agency will then work with that agency to help avoid the anticipated delay if possible.

a. In light of its overall responsibility for determining whether projects are consistent with the public convenience and necessity, FERC will be the lead agency for preparation of an EIS or EA on major interstate natural gas pipeline projects, unless, at the request of another Participating Agency (or after FERC's own review), FERC, in consultation with that agency, determines that another agency better meets the CEQ lead agency requirements.

b. The lead agency will encourage prospective applicants to establish and maintain an electronic web-based repository in which all filings by the applicants for authorizations, including filings with local, state and federal agencies, are made available to all Participating Agencies involved in their project. The repository should also include orders, requests and other pertinent documents. Such repository will be completely at the expense of the applicant.

c. The lead agency will include in any Notice of Intent to Prepare an EIS or EA guidance to the public regarding the process set forth in this Agreement.

3. Consult with FERC on FERC's Pre-Filing Process.

a. For those projects where a prospective applicant is proposing to use FERC's pre-filing environmental review process, the other Participating Agencies will, as appropriate, indicate their willingness and ability to work in the pre-filing timeframe along with the lead agency and other stakeholders to study the project. FERC's pre-filing process is described in the FERC's website.

b. When requested by a prospective applicant, FERC will make a determination as to whether the proposed project would benefit from the opening of a pre-filing docket to undergo a FERC pre-filing environmental review, including NEPA and related environmental statutes. If a pre-filing FERC docket is opened, the other relevant Participating Agencies will participate in the pre-filing review process.

B. Proactive Participation. Each Participating Agency will, as soon as possible after notification by a prospective applicant, an applicant, the lead agency, or otherwise:

Identify the applicable statutory, regulatory and policy responsibilities of each agency.

2. Identify the issues and concerns related to the proposed project that need to be addressed in order for the agency to meet its obligations.

3. Provide to the prospective applicant, an applicant, and/or the lead agency, relevant studies, data (such as maps showing features over which the agency may have jurisdiction), and any other information concerning the status of matters the agency considers relevant (including matters that may be under consideration, such as proposing a species for listing as endangered or threatened, or proposing an area for wilderness status).

4. During the pre-filing stage, identify issues and concerns and attempt to resolve them while the draft documentation is being developed.

C. Sharing of Data. The Participating Agencies will share the information gathered, considered and relied upon by each of them with all other relevant Participating Agencies. Specifically, the Participating Agencies agree to:

1. Cooperate in the preparation of requests for additional studies or data, to avoid duplicative requests and to compile a consistent set of information on which all of the Participating Agencies will rely.

2. Cooperate in identifying and developing the information at the level of detail required to complete environmental and cultural resources project review.

3. Cooperate in developing alternative routes and/or actions.

4. Cooperate in developing mitigation measures.

D. Communicate Informally. The Participating Agencies agree to informally communicate with the lead agency early and throughout the process to ensure that issues are raised as soon as possible and shared among all agencies. The lead agency

will coordinate and share information with and among other Participating Agencies.

E. **Resolve Disputes.** While retaining ultimate responsibility for making determinations and exercising their individual responsibilities in accordance with existing statutory responsibilities, the Participating Agencies will consult with each other to resolve disputes using existing dispute resolution methods and in accordance with existing statutory authorities. With respect to disputes regarding the procedures set forth in this Agreement, the Participating Agencies will consult with the CEQ. If a Participating Agency identifies such a dispute, it shall notify all other Participating Agencies and attempt to resolve the issue. If the dispute is not resolved within thirty (30) days of the notification of the dispute:

1. Any of the Participating Agencies involved in the dispute may forward the matter to the CEQ.
2. CEQ will make a written recommendation on resolution of the dispute within thirty (30) days of receiving the documentation from Participating Agencies, unless there is an agreement among all relevant Participating Agencies that the period should be extended for a particular reason;
3. Recommendations received from CEQ will be taken into account by the lead agency in consultation with the relevant Participating Agencies, in a manner consistent with applicable law, when determining further actions regarding the subject of the dispute. Any recommendation not accepted by the lead or Participating Agencies will have to be fully explained in writing to the Chairman of the CEQ.
4. This opportunity to consult with the CEQ shall be separate and apart from the opportunity to do so provided for in the CEQ's regulations at 40 C.F.R. Part 1504.

IV. IT IS MUTUALLY AGREED AND UNDERSTOOD THAT:

A. Nothing in this Agreement obligates the Participating Agencies to expend appropriations or enter into any contract or other obligation.

B. This Agreement may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all of the Participating Agencies. Participation in this Agreement may be terminated sixty (60) days after providing written notice of such termination to the other Participating Agencies.

C. This Agreement is intended only to improve the working relationships of the Participating Agencies in connection with expeditious decisions with regard to interstate natural gas pipeline project authorizations and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a any person or party against the United States, its agencies, its officers, or any other person.

D. This Agreement is to be construed in a manner consistent with all effective existing laws and regulations.

E. This Agreement neither expands nor is in derogation of those powers and authorities vested in the Participating Agencies by applicable law, statutes or regulations.

F. The terms of this Agreement are not intended to be enforceable by any party other than the signatories hereto.

G. The Participating Agencies intend to fully carry out the terms of this Agreement. All provisions in this Agreement, however, are subject to available resources. In addition, this Agreement does not limit the ability of any of the Participating Agencies to review and respond to final applications.

H. If a prospective applicant, applicant, or other person requests a correction of information disseminated pursuant to this Agreement, as authorized by Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (P.L. 106-554), the process by which such request will be addressed will be that established by the agency that disseminated the information.

V. PRINCIPAL CONTACTS

Each Participating Agency hereby designates principal initial contacts for the agency. These contacts may be changed at the Participating Agency's discretion upon notice to the other Participating Agencies. (See Attachment 1.)

**ATTACHMENT 1
PRINCIPAL CONTACTS**

The following are the principal initial contacts for each agency:

Department of the Army:

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VI. SIGNATORIES



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VL SIGNATORIES

R.L. Brownlee
Acting Assistant Secretary
of the Army (Civil Works)

 MAY 1 - 2002
Mark Rey
Under Secretary
Natural Resources and Environment
U.S. Department of Agriculture

A handwritten signature in black ink, appearing to read "Samuel W. Bodman". The signature is fluid and cursive, with a large, stylized initial 'S'.

Samuel W. Bodman
Deputy Secretary
Department of Commerce

J. Steven Griles
Deputy Secretary
Department of the Interior

Michael P. Jackson
Deputy Secretary
Department of Transportation

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Under Secretary
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Chairman
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SIGNATORIES
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Deputy Secretary
Department of the Interior

James L. Connaughton
Chairman
Council on Environmental Quality

Michael P. Jackson
Deputy Secretary
Department of Transportation

Linda J. Fisher
Deputy Administrator
Environmental Protection Agency

Samuel W. Bodman
Deputy Secretary
Department of Commerce

J. Steven Griles
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Robert G. Card
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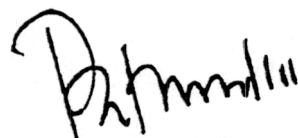
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FEDERAL ENERGY REGULATORY COMMISSION
Office of Energy Projects
Division of Gas - Environment and Engineering

**PROCESSES FOR THE ENVIRONMENTAL
AND HISTORIC PRESERVATION REVIEW OF
PROPOSED INTERSTATE NATURAL GAS FACILITIES**

In May 2002, the "Interagency Agreement (IA) on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission (FERC)" was signed by the FERC and other nine other federal agencies (signatory agencies).

In order to facilitate the coordination between the FERC and the other agencies, the FERC staff developed this document to:

Inform federal, state, and local agencies (participating agencies) about the basic procedures for the two processing options available to project proponents for the types of projects covered by the IA, with the FERC as the lead federal agency;

Serve as a supplement to each signatory agency's internal direction on implementing the IA;

Ensure that all participating agencies have a clear and common understanding of the applicable FERC procedures, and the FERC's expectations of project proponents and each participating agency; and

Describe how each of the participating agencies can become engaged in the environmental and historic preservation reviews of proposals and applications for interstate natural gas projects.

The FERC is responsible for authorizing the siting, construction, and operation of interstate natural gas pipelines, natural gas storage fields, and the liquefied natural gas (LNG) facilities pursuant to sections 3 and 7 of the Natural Gas Act of 1938 (NGA), as amended. Virtually all applications to the FERC for interstate natural gas projects require some level of coordination with one or more federal agencies to satisfy the FERC's requirements for environmental review under the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, and the Magnuson-Stevens Act.

The May 2002 Interagency Agreement (IA) applies to those projects where the FERC would normally prepare an environmental assessment (EA) or an environmental impact statement (EIS) pursuant to its siting authority under the NGA. The IA provides a framework designed to expedite and streamline environmental and historic preservation reviews that must be conducted in conjunction with the processing of proposals and applications for these projects. Smaller projects can be constructed under blanket-type or automatic authority, or may qualify as categorical exclusions which do not require the FERC to prepare an EA or an EIS.¹

PROPOSALS AND APPLICATIONS FOR NEW FACILITIES

Project proponents seeking authorizations from the FERC under sections 3 or 7 of the NGA have a choice, subject to the FERC's approval, of one of two procedures:

- A. The "Traditional Filing Process"; or
- B. The recently-adopted "NEPA Pre-Filing Process"

Both processes require the project proponent to begin working as soon as possible with the relevant participating agencies to enable them to identify resources and begin their analysis of the project, including identifying any cost recovery procedures.

A. The Traditional Filing Process

In the Traditional Filing Process, the project proponent, not the FERC, makes the first contacts with the participating agencies. The project proponent normally contacts the relevant agencies seeking information to determine the feasibility of building and operating the proposed facilities within an identified project area. The project proponent may contact agency staff informally by phone, or make contact in a written request for information. It is also common for the project proponent to file right-of-way applications with other participating agencies prior to filing an application with the FERC. Some participating agencies may spend considerable time providing data to the project

¹ Most existing interstate natural gas companies hold Blanket Certificates from the FERC that allow them to construct facilities if they meet certain environmental standards and project cost limitations (see CFR 18, sections 157.203 and 157.205) without further Commission review or approval. Consultation with agencies is still required for land use authorizations and environmental consultations because other agencies may have their own permit requirements and may require separate NEPA analysis. Although these types of projects are not covered by the IA, the companies may approach signatory agencies seeking input for environmental review and approval.

proponent, reviewing possible corridors and alternatives, and working with the project proponent to select a route that avoids or minimizes known resource conflicts.

For most large projects, project proponents hold one or more pre-filing meetings with the FERC staff to obtain guidance regarding the required information to meet the FERC's filing requirements, as well as advice on what the project proponent can do to help ensure efficient processing of the application by the FERC. The project proponent may or may not have already contacted the appropriate participating agencies to discuss potential issues prior to a pre-filing meeting with the FERC.

Regardless of whether or not the project proponent contacts the FERC prior to filing its application, under the Traditional Filing Process, the FERC establishes contact with other participating agencies after the application is filed. This first contact generally occurs in conjunction with the FERC's issuance of a Notice of Intent (NOI) to Prepare an EA or EIS, and may be oral or written. The NOI constitutes the beginning of the environmental review process; it contains a brief description of the proposal; a request for participating agencies to identify ("scope") issues and comment on the proposal; a request for cooperating agencies; and contact information with details regarding phone numbers, mail and website addresses. The scoping process is conducted to identify issues, and to identify means of resolving conflicts, and avoiding or mitigating adverse effects. As discussed in the IA, this early point in the process is where the signatory agencies begin to work collaboratively to complete the required review process as expeditiously as feasible.

The key difference between the Traditional Filing Process and the NEPA Pre-Filing Process (described below) is that in the Traditional process the environmental analysis, including scoping, does not begin until after the project proponent files its application with the FERC. Thus, there is often little interaction between the FERC, the project proponent, and other relevant agencies. The result of this is that interagency coordination is deferred until later in the process.

B. The NEPA Pre-Filing Process

The FERC developed the NEPA Pre-Filing Process as a mechanism to identify and resolve issues at the earliest stages of project development by involving the participating agencies and the public earlier in the process. While the NEPA Pre-Filing Process is a voluntary process, available at the request of the project proponent, it is subject to the FERC's approval. The FERC strongly encourages project proponents to avail themselves of the benefits and efficiencies to be gained from increased public involvement and early issue resolution.

Not unlike the Traditional Filing Process, in the NEPA Pre-Filing Process, a participating agency may first become aware of a project through a contact by the project proponent. The project proponent is responsible for asking agencies, other than the FERC, to participate in the NEPA Pre-filing Process. When asked to participate, each participating agency reviews the project, examines its resources and program goals, and then determines whether it is willing and available to participate in the NEPA Pre-Filing Process. A key consideration for some federal land management agencies' participation in the NEPA Pre-Filing Process is the project proponent's willingness to file a preliminary right-of-way application and establish a cost recovery account to fund agency participation (for example, the Bureau of Land Management and the Forest Service). After the project proponent ascertains the willingness of the other agencies to participate in the NEPA Pre-filing Process, it must send a request to the FERC describing why the project proponent wants to use the process, any work done to date, and plans for public involvement. Based on this information, the FERC must then determine whether pre-filing coordination is likely to be successful.

If the FERC approves a project proponent's request to use the NEPA Pre-Filing Process, the project is assigned a Docket Number with a "PF" prefix (e.g., PF01-01) which serves as the identifier for placing all relevant correspondence in the FERC's public record for that project. The FERC then notifies the participating agencies by telephone or in writing that the project proponent's NEPA Pre-Filing request has been approved. The FERC will also discuss the agencies' participation in a planning or informational meeting with the project proponent to discuss land and resource issues and concerns. The FERC and the participating agencies may consult regarding the agencies' ability to commit to a pre-filing time frame and a schedule established by the FERC. Most of the activities described in the IA regarding the NEPA Pre-Filing Process take place much sooner than they would otherwise be conducted in the Traditional Filing Process.

The FERC asks each participating agency to designate a primary contact for the project, and to devote the resources needed to commit to the schedule for processing the proposal. Similarly, the FERC identifies a project manager for each case. The reviews and schedules of all the agencies participating in the NEPA Pre-Filing Process will run concurrently, rather than sequentially, as is often the case in the Traditional Filing Process.

The signatory agencies have agreed in the IA to work with each other, and with other entities as appropriate, to ensure that timely decisions are made and that the responsibilities of each agency are met. The signatory agencies are also expected to provide the information and expertise to conduct the reviews in a timely manner,

consistent with the established schedule. Other responsibilities of the signatory agencies in the IA include:

- Identifying each agency's role and responsibilities;
- Identifying significant issues, or other administrative or land use/land designation barriers;
- Providing available data and recommendations; and
- Assisting in the drafting of NEPA documents, and related activities.

TIMELINE COMPARISON

The following discusses the typical timeline for a proposed project, highlighting some of the differences in activity and timing that might occur during the Traditional Filing Process, in comparison to what might occur during those same blocks of time during the NEPA Pre-Filing Process.

Months 0 - 5:

During this initial stage of any project, the project proponent is actively developing and marketing its proposal. Exploratory requests and planning activities are initiated solely by the project proponent. There is little difference between the Traditional and the NEPA Pre-Filing Processes during this time period.

The FERC staff has only very limited knowledge of the project at this stage, based on articles in the trade press, or through informal meetings with the project proponent. At this point, the FERC would not assign any resources to review or evaluate the project proponent's proposal.

As the project proponent develops a study of potential rights-of-way, the participating agencies, landowners, and the general public may be contacted by the project proponent to inform all interested parties of its plans. A project proponent may contact a participating agency with requests for information, such as land ownership patterns, land status, and other available resource data or studies, including requests for copies of documents such as land management plans, existing studies, corridor designations, etc.

It is near the end of this phase that the project proponent may contact federal land management agencies about filing right-of-way applications with and establish cost recovery accounts.

Months 5 - 12:

During this stage, in the Traditional Filing Process, a project proponent is continuing to develop its project plans, and is beginning to identify a preferred route (and alternatives). As required surveys are started, federal, state and local land management agencies, and landowners are contacted. The FERC staff becomes much more aware of the project at this point, but there is no requirement that the project proponent notify the FERC prior to filing an application. The FERC typically does not devote significant resources to the project during this time. Likewise, other participating agencies with permitting authority would not be expected to devote significant time or resources toward evaluating or addressing a proposal during this phase.

With the NEPA Pre-Filing Process, the FERC staff would begin to devote significant resources to addressing the proposal and working with the project proponent as much as 8 months prior to the filing of an application at the FERC. The FERC staff will make contact with the project proponent and the participating agencies at the earliest possible point to initiate scoping activities and begin the environmental analysis.

It is during this early period of early notification and contact with the interested parties, the development of shortened timelines and schedules, that the benefits of the NEPA Pre-Filing Process are most evident. However, participating agencies should be aware that at this point the project proponent may not have as much specific information about its proposal as it would have under the Traditional Filing Process, after an application has already been submitted to the FERC.

Months 12 - 20:

Using the Traditional Filing Process, the project proponent prepares its environmental reports and assembles its application for filing with the FERC during this period. After the filing of the application, the FERC notifies the public of the receipt of the application, conducts the necessary scoping, identifies and resolves issues, prepares and issues the NEPA document, then issues an Order (equivalent to a Record of Decision) approving the project. For a project requiring an EIS, this process can take 14 to 16 months.

With the NEPA Pre-Filing Process, the frontloading of the scoping, environmental analysis, and initial documentation of that analysis, makes it possible for the FERC staff, in cooperation with the participating agencies, to finalize and issue a Draft EIS shortly after an application is filed (approximately 2 to 3 months after filing of the application).

As a result, a final environmental document and Order can be issued by the FERC 5 to 7 months sooner than under the Traditional Filing Process.